

Serial No.: 10/657,475  
Art Unit: 2189

### REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed December 14, 2005. Reconsideration and allowance of the application and pending claims 1-20, as presented, are respectfully requested.

1. Indication of Allowable Subject Matter

Applicants greatly appreciate the Examiner's statement in the previous Office Action in which claims 1-5 have been indicated as allowable. Applicants believe the remaining claims are also in condition for allowance.

2. Response to Rejection of Claims Under 35 U.S.C. § 112, Second Paragraph

Claim 16 has been rejected under 35 U.S.C. § 112 for having insufficient antecedent basis. Applicants have amended claim 16 to overcome the rejection and respectfully request withdrawal of the rejection.

3. Response to Rejection of Claims Under 35 U.S.C. § 102

Claims 6, 8-11, 13-16, and 18-30 have been rejected under 35 U.S.C. § 102(e) as being anticipated by *McKean* (U.S. Patent No. 6,681,339). Applicants respectfully traverse this rejection.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed subject matter must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e). In the present case, not every feature of the claimed subject matter is represented in the *McKean* reference.

Regarding claim 6, Applicants respectfully submit that independent claim 6 is allowable for at least the reason that *McKean* does not disclose, teach, or suggest at least the feature "wherein the first data-directing device is configured to mimic the first backup storage device when the second backup storage device is in use," as recited in the claim. Hence, *McKean* does not teach or suggest all of the features of claim 6. Accordingly, *McKean* fails to anticipate claim 6, and the rejection should be withdrawn.

Serial No.: 10/657,475  
Art Unit: 2189

Likewise, independent claims 11 and 16 also recite a similar feature where a data-directing device is configured to mimic a backup storage device when another backup storage device is in use. As previously stated, this feature is not taught or suggested by *McKean*. For at least this reason, *McKean* fails to anticipate claims 11 and 16, and the rejection for these claims should be withdrawn.

Because independent claims 6, 11, and 16 are allowable over the cited art of record, dependent claims 8-10, 13-15, and 18-30 (which depend from independent claims 6, 11, or 16) are allowable as a matter of law for at least the reason that the dependent claims contain all the features of their respective independent claims. For at least this reason, the rejections of claims 8-10, 13-15, and 18-30 should be withdrawn.

4. Response to Rejections of Claims Under 35 U.S.C. § 103

In the Office Action, claims 7, 12, and 17 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Nagasawa* in view of *Kitamura* (U.S. Patent Publication No. 2005/0044163).

It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).


Applicants submit that independent claims 6, 11, and 16 contain features that are not disclosed in *McKean*, as previously discussed. Further, *Kitamura* is legally inadequate to cure the deficiencies of the aforementioned reference. Accordingly, claims 7, 12, and 17 (which depend from respective independent claims 6, 11, and 16) are allowable over the cited art for at least this reason.

Serial No.: 10/657,475  
Art Unit: 2189

### CONCLUSION

For at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

  
Charles W. Griggers  
Reg. No. 47,283